



Office of the City Attorney

DATE: August 25, 2017

TO: Councilwoman Jolie Justus, 4th District In-District

FROM: Cecilia Abbott, City Attorney/Ethics Compliance Officer *CA*

SUBJECT: Informal Advisory Opinion

ISSUE

You have asked for an informal advisory opinion regarding whether you have a conflict of interest concerning the selection of a proposer to design, build, and possibly finance a new airport.

OPINION

It is my opinion that you do not have a conflict of interest in this project.

BACKGROUND

You are the chair of the City Council Airport Committee. In this position, you serve on the City selection committee charged under §2-31, Code of Ordinances, with ranking proposals from most to least qualified that have been submitted to build a new airport terminal. The selection committee has reviewed the proposals and received advice from financial and legal advisors on the proposals. Its deliberations are expected to begin on Tuesday.

You are a member of the City Council and ordinances concerning the successful proposer will be brought to the Council for its consideration. One such example is Ordinance No. 170663, which was introduced on August 24, 2017, and is now pending before the joint committee of Airport and Finance & Governance. This ordinance adopts the report and recommendations of the selection committee and authorizes the City Manager to undertake negotiations toward a memorandum of understanding and other contractual agreements. It also provides that if the Council determines that negotiations are unsuccessful, the City Manager is authorized to negotiate with the next highest ranked firm.

As you have explained to me, you are "of counsel" for a large Kansas City law firm, Shook Hardy & Bacon. You are director of pro bono services in your firm and report directly to the firm's chair. You are not on track for partnership and your compensation is not based on firm revenues. You receive an annual salary for your work. You are eligible for a merit-

based bonus, but you are not eligible for any bonuses based on production or firm revenues. This law firm employs over 500 attorneys in twelve offices in different cities.

Burns & McDonnell is one of the proposers in the Airport Terminal Modernization Project. Although Burns & McDonnell is a client of your law firm, you do not and will not perform any legal work for it. You have not and will not receive any compensation for any work performed by your firm for Burns & McDonnell. Burns & McDonnell has retained a different law firm, Stinson Leonard Street, in connection with its proposal to build a new airport terminal and Stinson has been performing services in this regard.

APPLICABLE ORDINANCES

§§2-2001 – 2-2111, Code of Ordinances, comprise the City’s Code of Ethics and §§2-2020 – 2-2024, within the Code of Ethics govern conflicts of interest. §2-2020(a) sets forth what constitutes a conflict of interest and reads as follows:

Sec. 2-2020. - Conflict of interest.

(a) *Benefits received.* An official or employee may not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows, or has reason to believe, may result in a personal or financial benefit, not shared with a substantial segment of the city's population, for any of the following persons or entities:

- (1) Himself or herself;
- (2) A member of his or her household, his or her spouse or domestic partner, or the employer or business of any of these people;
- (3) A sibling or step-sibling, step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people; or
- (4) A nongovernmental civic group, union, social, charitable, or religious organization of which he or she (or his or her spouse or domestic partner) is an officer, director, or board member, or which he or she holds any other position on the organization's administrative or governing body.

In interpreting the phrase, “personal or financial benefit”, we must utilize the definitions found in the Code of Ethics. Under the Code of Ethics, “*financial benefit*” includes “any money, service, license, permit, contract, authorization, loan, discount, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.”¹ The term “*personal benefit*” includes “benefits other than those that are directly financially advantageous. These include financial benefits to relatives, business associates, and others, as well as non-financial

¹ §2-2002, Code of Ordinances

benefits to these people and to oneself, including such things as reputation and the success of one's career."²

A conflict of interest exists if you take an action that you know, or have reason to believe, may personally or financially benefit you, and the benefit is not shared by a substantial segment of the City's population. If such a conflict exists, you must withdraw from any participation in the matter:

An official or employee must refrain from acting on or discussing, formally or informally, a matter before the city, if acting on the matter, or failing to act on the matter, may personally or financially benefit any of the persons or entities listed in section 2-2020. Such official or employee should join the public if the withdrawal occurs at an open meeting, or leave the room if it is a closed meeting. . . . Withdrawal at a meeting requires the public announcement, on the record, of the reason for withdrawal.³

CONCLUSION

It is my opinion that no conflict of interest is presented by your service on the City selection committee to examine and rank proposals for the Airport Terminal Modernization Project. There is no personal or financial benefit to you that may result through your evaluations, discussions, and rankings of the proposals. For purposes of this discussion and the issue raised, there is no benefit to you if the Burns & McDonnell proposal is ultimately recommended to the City Council and either subsequently approved or rejected by the Council. As there is no conflict of interest present, there is no reason for you to withdrawal from participation in this project, either on the selection committee or as a member of the City Council.

Burns & McDonnell has retained a different law firm, Stinson Leonard Street, to represent it in its pursuit of the Airport Terminal Modernization Project. Presumably, financial benefits accrue to the Stinson law firm from this representation. Your firm is providing no representation to Burns & McDonnell in the Airport Terminal Modernization Project.

Your income is not in any way dependent on any revenues realized from legal services provided to Burns & McDonnell on other matters. You do not and will not perform any legal work for Burns & McDonnell. You are the director of pro bono legal services at Shook and do not engage in any billable work for the firm. Your salary and bonus eligibility are not affected by firm revenues. You are "of counsel" at your firm, and, as such, have no partnership responsibilities for firm clients.

§2-2020(d), Code of Ordinances, concerns private financial transactions and must also be examined. This provision states that an official must disclose at the beginning of any transaction, project, or discussions about any transaction or project, if a known person with a substantial financial interest is a customer or client to which an official has supplied goods or

² §2-2002, Code of Ordinances

³ §2-2021(a)/(c), Code of Ordinances.

services through one or more private transactions during the previous twenty-four months, having, in the aggregate, a value of or greater than \$1,000.00. Such circumstances must be disclosed to the City Clerk. Since you have not supplied any goods or services to Burns & McDonnell, it is my opinion that there is no private financial transaction under this ordinance provision.

REQUEST TO THE MUNICIPAL OFFICIALS AND OFFICERS ETHICS COMMISSION

As the Ethics Compliance Officer, my opinion is an informal non-binding opinion concerning the interpretation of Codes of Ethics provisions pursuant to §2-2097(a)(7), Code of Ordinances. Only the Municipal Officials and Officers Ethics Commission may issue a binding advisory opinion on matters of interpretation of the Code of Ethics. If you wish, I will forward your request and this memorandum to the Commission for its consideration.